1972, signed it and personally handed it to someone with instructions to hand it to the general manager of the Kuala Lumpur branch of the company. These facts having regard to the contents of the said letter constitute *prima facie* sufficient evidence of instigation by the respondent.

It was lastly submitted on behalf of the respondent that on the facts and having regard to all the circumstances his conviction could not be said to imply a defect of character which makes him unfit for his profession. We rejected this submission. In our judgment it is the nature of the offence which is the sole criterion in determining whether or not an advocate and solicitor comes within the provisions of section 84(2)(a) of the Legal Profession Act. In our judgment the offence of which the respondent was convicted is one which clearly implies a defect of character which makes him unfit for the profession of an advocate and solicitor.

Finally, having considered all the circumstances including his admission of having committed another serious criminal offence we were in no doubt that the extreme penalty ought to be imposed and we accordingly ordered that the respondent be struck off the roll and that he should bear all the costs of the Law Society.

Order accordingly.

Solicitors: *Hilborne & Co.*

MALAYSIAN REPORTS

SYED HUSIN ALI v. SHARIKAT PENCHETAKAN UTUSAN MELAYU BERHAD & ANOR.

[O.C.J. (Mohamed Azmi J.) March 7, 1973]

[Kuala Lumpur — Civil Suit No. 893 of 1969]

Defamation — Libel — Publication of report of speech of Menteri Besar, Johore containing words defamatory of plaintiff — Damages.

Newspaper — Report of speech containing defamatory words — Damages.

In this case the plaintiff claimed damages for libel contained in a newspaper published by the first defendant and of which the defendant was the editor. The publication was admitted and it was proved that the words complained of referred to the plaintiff. The plaintiff alleged that the words complained of were capable of the following false innuendoes, namely that the plaintiff was dishonest, disloyal to the Government, a subversive element, an irresponsible politician, an ungrateful person, a supporter of President Sukarno and an instigator of unrest in the country. The only issue was whether the words complained of were defamatory of the plaintiff.

Held: (1) in the circumstances of this case the words complained of, when considered in the context of the news report, were defamatory of the plaintiff;

(2) having regard to all the circumstances of the case, particularly the nature of the libel, the position of the plaintiff and the extent of the publication, damages in the sum of $6,500 would be fair and adequate to vindicate him to the public and console him for the wrong done.

Cases referred to:-

(1) *Lewis* v. *Daily Telegraph Ltd.* [1964] A.C. 234.

(2) *Capital and Counties Bank* v. *Henty and Sons* (1880) 5 C.P.D. 514 at p. 536.

(3) *Cassidy* v. *Daily Mirror Newspapers Ltd.* [1929] 2 K.B. 331 at p. 339.

(4) *Grubb* v. *Bristol Limited Press Ltd.* [1963] 1 Q.B. 309 at p. 327.

(5) *Byrne* v. *Deane* [1937] 1 K.B. 818 at p. 833.

(6) *Cassell & Co. Ltd.* v. *Broome & Anor.* [1972] 1 All E.R. 801 at p. 824.

(7) *Praed* v. *Graham* (1889) 24 Q.B. D. 53 at p. 55.

(8) *Uren* v. *John Fairfax & Sons Pty. Ltd.* (1967) 117 C.L.R. 118 at p. 150.

(9) *Chop Kim Lee Seng Kee* v. *Yeo Kiat Jin* [1956] M.L.J. 67.

(10) *Yap Bor Lim* v. *Chia Thye Poh & Anor.* [1965] 2 M.L.J. 123.

(11) *Sandison* v. *Malayan Times Ltd. & Anor.* [1964] M.L.J. 332.

(12) *Rajagopal* v. *Rajan* [1972] 1 M.L.J. 45.

(13) *Rookes* v. *Barnard* [1964] 1 All E.R. 367.

CIVIL SUIT.

S. T. Gamany for the plaintiff.

Bhag Singh for the defendants.

Mohamed Azmi J.: This is a claim for damages for libel contained in *Utusan Melayu* newspaper, of which the first defendants are the proprietors, printers and publishers, and the second defendant is the editor. It is admitted in the pleadings that the plaintiff is and was at all material times a lecturer of the University of Malaya, and that *Utusan Melayu* is an influential Malay daily newspaper having a wide circulation throughout the country. The plaintiff complains that

the defendants had published a certain news report in the *Utusan Melayu* of January 1, 1965, which contained defamatory imputations against him.

The events leading to the publication of the news report appear to be as follows. Some time in December 1964, the plaintiff was invited to address a meeting of the Johore Muslim Association in Muar. According to the plaintiff's testimony, he was asked to speak on a subject entitled "Backwardness of Malays in economic and educational fields". It is not seriously in dispute that at that time the country was in a state of armed conflict with Indonesia which is popularly known as confrontation period. The plaintiff's speech was published the following day in *Utusan Melayu*, although according to the plaintiff it was not accurately reported, and it gave only a brief summary of part of his speech. From paragraphs 1 to 5, page 7 of the agreed bundle of documents, it is clear that the plaintiff's speech was published in *Utusan Melayu* on December 22, 1964, and that when the Johore Menteri Besar, Datuk Haji Hasan bin Yunus, now deceased, made a speech marking the opening of a *surau* in Muar on December 31, 1964, he was referring to the plaintiff's speech as published in *Utusan Melayu* on December 22. On January 1, 1965, *Utusan Melayu* published the remarks of the Menteri Besar, which are the subject matters of the present action, together with the photograph of the plaintiff and the Menteri Besar. It is therefore apparent that the words complained of are contained in a news report of the speech given by the Johore Menteri Besar during the opening ceremony of a new *surau* in Muar. The full text of the news report in Jawi can be found in Exhibit P1. The same document together with its Romanized and English translations also appear in the agreed bundle of documents. At the outset of the hearing, counsel for both parties informed me that the correctness of these translation have been admitted. It should be noted that for ease of reference, the news report has been put in numbered paragraphs both in the statement of claim and the agreed bundle of documents. The heading and the relevant parts of the news report which contained the alleged defamatory imputations appear in paragraphs 3 and 4 of the statement of claim. Paragraph 4 which contains the literal English translation is now reproduced:

"Protecting the people's minds and hearts from subversive ideas more important ..... UNGRATEFUL? Menteri Besar accuses Lecturer holds similar views as Sukarno."

"1. Dato Haji Hasan Yunus, the Menteri Besar of Johore considers Syed Husin Ali as having the same views as Sukarno in wanting to arouse the hatred of the Malaysian people against the Government and the British."

"2. The Menteri Besar also accuses the University Lecturer of spreading subversive ideas in order to poison the thoughts and feeling of the public, especially the Malays in this country."

"6. He said, Syed Husin has committed an act of subversion by his talk to the Muslim students in Johore."

"8. Touching on Syed Husin's views that the British took away $81 million from this country in 1961, Dato Hasan said that this view is very similar to the claims made by Sukarno to the whole world that Malaysia is still colonised and controlled by the British."

"12. He then accused Syed Husin of trying to arouse the feelings of hatred against the British among the people in this country."

"13. His intention — so that the people will act against the British bases in this country. 'And this is the very thing that Sukarno wants', said the Menteri Besar."

"14. Regarding Syed Husin's contention that the tax (quit rent) on British estates is 30 cents per acre while that imposed on Malay small-holders is $6.00 per acre, Dato Hasan clarified."

"That contention is based on comparisons which have not been properly investigated. I know about this and I have made my investigations in 1960."

"19. When commenting on Syed Husin's views that 87% of the Malays are still backward economically, Dato Hasan said, 'These views are similar to those expressed by the captured Indonesian guerilla who said that they came here to help the suffering people in this country'."

"21. He regrets over the attitude of Syed Husin, since he studied with the help of scholarship from the Johore Government."

"22. What does Syed Husin give in return? If his views are good we are willing to accept them, but his views are far from good, said Dato Haji Hasan."

"24. It is easy to guard against the Indonesian aggressors because we can see them physically, but it is hard to protect the feelings and thinkings of the people since we see nothing, he emphasised."

"25. The Menteri Besar finally called upon the people to be vigilant against actions by a small group of people who want to destroy the people's faith on the Government."

Under paragraph 5 of the statement of claim, it is pleaded that:

"The abovesaid words are defamatory of the plaintiff in their natural and ordinary meaning, and by these words the defendants meant and were understood to mean that the plaintiff was dishonest, disloyal to the Government of Malaysia, a subversive element, irresponsible politician, ungrateful, a supporter of President Sukarno and instigating unrest in this country."

In consequence thereof, it is alleged that the plaintiff has been seriously injured in his character, credit and reputation and has been brought into public scandal, odium and contempt. In their statement of defence, the defendants admit publishing the news report in Jawi script, but they deny that the words complained of are defamatory of the plaintiff. They also deny that they bore or were understood to bear or were capable of bearing any of the meaning as alleged by the plaintiff.

Having regard to the pleadings, it is common ground that the only issue is whether the words complained of are defamatory of the plaintiff. If they are defamatory, then the question of damages will arise. In this case, publication has been admitted, and the fact that the words complained of refer to the plaintiff has been proved beyond doubt since the plaintiff was referred to by name and as well as by photograph in the news report.

From paragraph 5 of the statement of claim, it would appear that the plaintiff is contending that the words complained of are defamatory in their ordinary and natural meaning. In my view, the present action falls within the type of cases in which the ordinary and natural meaning of words only arise from them by inference or implication, and as such plaintiff has correctly pleaded the meaning he ascribes to the words. Such a meaning, which should be regarded as part of the natural and ordinary meaning of the words, has been described as a "false innuendo" as distinguished from a "true" or "legal" innuendo, or a secondary

meaning. In *Lewis* v. *Daily Telegraph Ltd.*,[1] Lord Reid said at page 258:

"What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning."

Further, at page 280, Lord Devlin said:

"The other respect is that the natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a court is prepared to make as a matter of construction all such insinuations and innuendoes as could reasonably be read into them by the ordinary man."

In *Capital & Counties Bank* v. *Henty & Sons*,[2] Cotton L.J. said:

"... one must consider, not what the words are, but what conclusion could reasonably be drawn from it, as a man who issues such a document is answerable not only for the terms of it but also for the conclusion and meaning which persons will reasonably draw from and put upon the document."

The above passage has been quoted with approval in *Cassidy* v. *Daily Mirror Newspapers, Limited*[3] and *Grubb* v. *Bristol United Press Ltd.*[4].

Under paragraph 5 of the statement of claim, the plaintiff has ascribed the following false innuendoes to the words complained of, *viz.* that the plaintiff is —

(a) dishonest;

(b) disloyal to the Government of Malaysia;

(c) a subversive element;

(d) an irresponsible politician;

(e) ungrateful;

(f) a supporter of President Sukarno; and

(g) instigating unrest in this country.

Apart from (d), I find that construing the words complained of in their natural and ordinary meaning in the sense in which a reasonable man of ordinary intelligence would be likely to understand them, they do have the meanings ascribed to them as alleged by the plaintiff. The conclusion that the plaintiff is dishonest can reasonably be drawn from paragraphs 8, 14 and 19 of the news report. The imputation that he is a subversive element is clear in the heading and paragraphs 2, 6, 24 and 25; and so is the imputation that he is a supporter of President Sukarno in the heading and paragraphs 1, 8, 13 and 19. The allegation that he is an ungrateful person is inherent in the heading of the news report and also in paragraphs 21 and 22. The conclusion that he is instigating unrest in this country can also be reasonably drawn from paragraphs 13, 14 and 19. Having considered the words used in all the paragraphs mentioned above, I also find that there is an imputation that the plaintiff is disloyal to the Government of Malaysia. In this case, although the literal English translation in paragraph 4 of the statement of claim is not word for word the same as the agreed English translation in the agreed bundle of documents, I find in substance they are the same as the Jawi script. In any event, reading either the literal English translation in paragraph 4 of the statement of claim, or the full text of the Jawi script and its English translation in the agreed bundle of documents, one cannot come to any conclusion other than that the words complained of are defamatory of the plaintiff. *Gatley* on Libel and Slander, Sixth Edition at page 4, paragraph 4 says:

"There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend 'to lower the plaintiff in the estimation of right-thinking members of society generally, 'to cut him off from society,' or 'to expose him to hatred, contempt or ridicule,' is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published."

Further, at page 14, paragraph 31, *Gatley* says:

"A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking persons generally. To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency."

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty. In the present case, the plaintiff is a lecturer in the University of Malaya. To impute that he is dishonest is clearly defamatory although the imputation relates to his professional integrity in failing to make proper investigation regarding quit rents payable by British rubber estates and Malay small-holders, and regarding the squandering by the British of U.S.$81 million from this country in 1961, and that 87 per cent of the Malays are still backward economically. So is the imputation that he is ungrateful. In my view, the most libellous part of the news report is the imputation that he is a subversive element; a supporter of President Sukarno, and is instigating unrest in this country. By whatever test, to impute such matters on a person during the period of Indonesian confrontation is undoubtedly defamatory. It is common knowledge and, I think, I can take judicial notice of the fact that there was a strong anti-Sukarno feeling during that period amongst all law-abiding and right-thinking people of this country. I am, however, doubtful that an imputation that the plaintiff is disloyal to the Government of Malaysia, as distinguished from disloyalty to the king or country, is defamatory. Further, I do not find anything in the words complained of to warrant the imputation that he is an irresponsible politician. Although the plaintiff testifies that at all relevant times he was a member of Partai Rakyat which took part in the 1959 general election, the whole newspaper report refers to him as a lecturer of the University of Malaya, and in my judgment such false innuendo has not been established in this case.

It is, of course, open to the defendants to explain by evidence that in the special circumstances of this

case, the words complained of were not issued or understood in a defamatory sense. The defence has not adduced any evidence in this case obviously because the original author of the offending statements has already passed away. I have considered the written submission of the defence with much thought and care. It would appear that the sum total of the defendants' first submission is that, the plaintiff has not established that the words complained of tend to lower the plaintiff in the estimation of right-thinking men, and it is also argued that the plaintiff was in fact a prominent and outstanding politician belonging to the opposition and recognized by the people as such when he gave his talk to the Muslim students in Muar. Apart perhaps on the question of damages, I am unable to see having regard to the pleadings how the fact that the plaintiff is a prominent politician would be relevant in determining the issue of whether the words complained of are defamatory or not. As stated by *Gatley* (Sixth Edition) at page 4, paragraph 4:

"Any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of society generally .. is defamatory of him."

Further at page 17 paragraph 38, *Gatley* says:

"Any imputation is defamatory if it tends to lower a person in the estimation of others, or to affect any aspect of his reputation. For instance, to say of a man that he is ungrateful (as in the present case) would scarcely expose him to hatred, ridicule, or contempt, or cause him to be avoided, yet it has been held defamatory."

As to the meaning of 'Right-thinking men', *Gatley* at page 21, paragraph 42 says:

"The criterion is 'the *arbitrium boni*: the view which would be taken by the ordinary good and worthy subject of the King,' or by 'right-thinking people generally'."

In any event, in view of my finding that there is nothing in the words complained of to warrant a defamatory imputation that the plaintiff is an irresponsible politician, the matter need not be pursued any further.

The second contention of the defence is that the Menteri Besar's remarks were based on the plaintiff's speech to the Muslim students as published in *Utusan Melayu* of December 22, 1964. But it should be noted that the plaintiff's speech in the newspaper has not been produced in evidence, and having regard to the plaintiff's uncontradicted evidence on this point, I accept his testimony that the report of his speech in the defendants' newspapers was not accurate and that it gave only a brief summary of part of his speech. In his evidence, the plaintiff also alleges that, apart from paragraphs 19 and 25, the words complained of do not relate to his speech to the Muslim students or are not exactly the words used by him. Under the circumstances, the defence contention that the reference to the plaintiff as being subversive should be qualified by paragraphs 3 and 6 of the news report cannot be sustained. In other words, if the news read out by the Menteri Besar did not in fact contain an accurate report of the plaintiff's speech or only contained a brief summary of part of the speech, how can it be said the words complained of are not defamatory merely because the Menteri Besar had read the inaccurate news before making his disparaging remarks?

The third main contention of the defence is that as regards the imputation that the plaintiff is a subversive element, the Menteri Besar was merely saying that the plaintiff was a subversive because he was questioning the effectiveness of government policies. Therefore, a right-thinking man would not think that the plaintiff was a subversive. In fact, it seems to be argued that that the fact the plaintiff was regarded with disfavour by the Menteri Besar would raise his character in the estimation of right-thinking men. The present case is not similar to *Byrne* v. *Deane*[5] where it was held that in the case of an informer, the very circumstances which will make a person be regarded with disfavour by the criminal classes would raise his character in the estimation of right-thinking men. The Menteri Besar was the Chief Executive of the Johore State, and as such I do not think the defence argument can be sustained. Therefore, it is difficult to see how an imputation of being subversive during the Indonesian confrontation period, for whatever reason can be held anything else but defamatory *per se*. As learned counsel for the defence himself agrees, the question to be determined is whether the news report read as a whole is defamatory or not. As such, the imputation that the plaintiff is a subversive element should be read together with the other imputations that he is a supporter of President Sukarno; instigating unrest in this country; dishonest and ungrateful.

It is also argued that the plaintiff might have been defamed if subsequent to the publication of the news report, he had been arrested or detained and interrogated or suspended from his job. The short answer to this is that unlike slander, libel is in all cases actionable *per se*. As stated earlier on, to be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency.

The defence has also sought to refer to certain statements made by the plaintiff in a talk in Kelantan, and also to an article written by him in a political magazine called *"Benteng"*, and as well as to the fact that the plaintiff belonged to a political party which allegedly did not recognize the existence of Malaysia. I do not think these matters are relevant having regard to the fact that the defence has not pleaded justification, fair comment or qualified privilege.

The words complained of in this case must be viewed from two important aspects. First, they were published during the period of Indonesian confrontation. Secondly, the plaintiff's speech to the Muslim students as published by *Utusan Melayu* which earned the displeasure of the Menteri Besar, was given by the plaintiff as a result of an invitation by the Muslim Association. The subject-matter of the talk was not on "Confrontation" but on a subject entitled "Backwardness of Malays in economic and educational field". With this background, and for the reasons which I have stated earlier on, it is my finding that the words complained of, when considered in the whole context of the news report, are defamatory of the plaintiff.

On the question of damages, learned counsel for the plaintiff submits that the circumstances of this case call for aggravated damages, whilst learned counsel for the defence argues that the damages should be nominal. In a libel, damages are presumed. *Gatley*

at page 599 paragraph 1380 says:

"In an action of libel 'the assessment of damages does not depend on any legal rule.' The amount of damages is 'peculiarly the province of the jury,' who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology,... and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow 'for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused.' They should also take into account the evidence led in aggravation or mitigation of the damages."

In *Cassell & Co. Ltd.* v. *Broome & Anor.*,[6] Lord Hailsham quoting Lord Esher in *Praed* v. *Graham*[7] has this to say:

"... in actions of libel ... the jury in assessing damages are entitled to look at the whole conduct of the defendant (I would personally add 'and of the plaintiff') from the time the libel was published down to the time they give their verdict. They may consider what his conduct has been before action, after action, and in court during the trial."

In the same case, Lord Hailsham, quoting Windeyer J. in *Uren* v. *John Fairfax & Sons Pty. Ltd.*[8] said as follows:

"It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways — as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money."

Learned counsel for the plaintiff has advanced nine grounds why aggravated damages should be awarded, *viz*: —

(a) The viciousness of the language used and that on not less than three occasions the word "subversive" was used in the news report. This "stigma" has remained till today. The State of Emergency declared during Confrontation is still on. The country is fighting a war against the Malayan Communist Party at the date of publication of the libel and till now.

(b) His professional integrity was questioned. He had, it was alleged, talked without having properly investigated on a subject in which he was an authority. He lectured on this subject in the University. This had lowered him tremendously in the estimation of his fellow colleagues and students.

(c) *Utusan Melayu* as admitted by the defendants was a widely circulated paper both in the Federation and in Singapore at the time of publication. So was the *Utusan Zaman*. It brought him to defame amongst the very people of whom he had made a study and of whom he talked to the Muslim students, and to the very people to whom he was grateful for the scholarship he received.

(d) The matters complained of were again published by the defendants on the next day (January 2, 1965).

(e) There were other defamatory publications of the plaintiff by the defendants both in *Utusan Melayu* and in *Utusan Zaman*.

(f) The defendants had also refused to apologise.

(g) The conduct of the defendants in this action cannot be ignored. The plaintiff had to apply to court on not less than four occasions for particulars. And these applications were always delayed. It was even necessary to apply to the court for English and Rumi translations. (See Court Order dated March 16, 1970).

(h) The period of Confrontation must be considered. During this period when Indonesia was at war with us, and Indonesian troops had been dropped into our country, the plaintiff was alleged to have thoughts similar to them and to support Sukarno and the Indonesian guerillas. When Britain was aiding us in our defence he was alleged to incite hatred against the British so the Malay students whose minds he is purported to have especially poisoned should act against their bases here. Several of his political colleagues were detained. These allegations had effects on him, his family and the institution for which he was working. By the publications on January 1 and 2, 1965 and again on November 15 and 16, 1966, the defendants were urging the Government to take action against the plaintiff. He was put into utmost fear.

(i) The second defendant had refused to give evidence.

As regards (a), whilst I agree that to allege a person is spreading subversive ideas is one of the most serious and vicious allegations that can be made against a person in this country, I do not think that there is evidence to support the plaintiff's contention that the "stigma" of being called "subversive" has remained till today. There is no evidence from which it can be inferred that the plaintiff has been affected by it up to today. With regard to (b), I also find no evidence to suggest the allegation that his professional integrity as a lecturer was or has been questioned. On the contrary, since 1972, he has become the acting head of the Anthropology and Sociology Department of the University of Malaya. As regards (c), there is no doubt that *Utusan Melayu* and *Utusan Zaman* were widely circulated Malay newspapers in this country and Singapore, and I agree that imputing the plaintiff of ingratitude as a scholarship holder is a serious allegation. With regard to (d), I also agree that the fact that some of the words complained of, including the word "subversive" were again published by the defendants on the next day, *i.e.* on January 2, 1965 (see Exhibit P2), should entitle the plaintiff to more than a mere nominal damage. With respect to (e), it is true that about fourteen months prior to the publication of the defamatory news report, the defendants had referred to the plaintiff's socialism as being Red. (See Exhibit P3). After the publication, the defendants had also published on November 15 and November 16, 1966 and on April 30, 1967 articles in which the plaintiff was again referred to in a disparaging manner. (See Exhibits P4, P5 and P6). Exhibit P4 was published about twenty-two months after the offending news report was published. Whilst these other publications are admissible, the considerable lapse of time between the date of the libel

and the publication of the other defamatory words should, I think, be taken into account. As regards (f), although the defendants had failed to apologise for the defamatory news report, it should be noted that, the first occasion the second defendant was requested by the plaintiff for an apology was made on April 2, 1969, *i.e.* some four years and three months after the publication of the words complained of; and in the case of the first defendant, the delay was about four years and four months (see Exhibits P7 and P8). It would appear that the Menteri Besar whose speech was reported had died before the plaintiff notified the defendants that he regarded the words published on January 1, 1965 were defamatory. Under the circumstances, I agree with the defence submission that since they were mere publishers, the plaintiff's delay in taking action has prejudiced them in that if the plaintiff had brought the matter to their attention earlier, it might have been possible for them to make a plea of justification and/or fair comment with the assistance of the Menteri Besar. I cannot accept the explanation given by the plaintiff for the undue delay in bringing the words complained of to the attention of the defendants. In my view, this is a factor which should be taken in mitigation of damage. Further, it is important to note that the object of giving a defamer an opportunity before writ to withdraw or apologise is to help to show that the plaintiff's real object of taking legal action is to vindicate his character and not merely to make money out of the attack. In his explanation for the delay, the plaintiff said that he noted after the defamatory news report was published in January 1965, *Utusan Melayu* went on publishing more articles in which he was referred to unfavourably. He then decided to put a stop to this. But there is nothing in Exhibit P7 or Exhibit P8 to support this. In both letters, the defendants were never asked for an undertaking not to publish the same or any similar libel in future. Yet, in spite of the absence of such request, after the letters were sent in 1969, there is no evidence that the defendants continued to publish statements defamatory of the plaintiff. With regard to (g), I agree the dilatory manner in which the defendants conducted themselves in these proceedings should be taken in aggravation of damage. But as regards (h), although the period of Indonesian confrontation must be considered, I do not think there is evidence to support the plaintiff's contention that, apart from himself, the defamatory news report had also affected his family and the University of Malaya. With regard to (i), the fact that the second defendant has elected not to give evidence is, of course, relevant on the question of aggravation of damage.

In assessing damages, I have considered all the matters stated above both in aggravation or in mitigation of damage, and I have also considered the following cases which have been cited by learned counsel for the plaintiff. In *Chop Kim Lee Seng Kee* v. *Yeo Kiat Jin*,[9] a commission agent was awarded $2,000 for slander because he being a businessman, a rumour regarding his insolvency was capable of producing financial losses which would be incapable of being assessed. In *Yap Bor Lim* v. *Chia Thye Poh & Anr.*,[10] an undergraduate sued another student for publication which was agreed to be libellous in the Chinese edition of "*Barisan*". This was a political newspaper and its circulation was limited to the Chinese reading public of Singapore. The plaintiff was awarded $5,000 to be reduced to $3,000 if an apology was published. In the present case, at the time of publication, the plaintiff was an Assistant Lecturer in the University of Malaya. He was also a member of Partai Rakyat since 1961, but did not hold any executive post till 1967. Though an influential newspaper with wide circulation, it can reasonably be inferred by the very nature of *Utusan Melayu* that its circulation must have been confined at that time mostly to Malay reading public in this country and Singapore who understood Jawi. Learned counsel for the defence has referred the court to the case of *Sandison* v. *Malayan Times Ltd. & Ors.*[11] where the plaintiff was awarded a nominal damage of one cent. However, the reason for awarding the nominal damage was that the plaintiff's conduct as servant of the Rubber Industry (Replanting) Board was such as to have forfeited whatever esteem in which he was held by others before his dismissal. His summary dismissal by the Board which took place before the publication had left him little residue of credit and reputation to be further damaged by the libel in the defendants' newspaper. In *Rajagopal* v. *Rajan*,[12] the plaintiff was awarded $1,500 for libel contained in a letter which was circulated to members of a political party. On the principles laid down by the House of Lords in *Rookes* v. *Barnard*[13] and reaffirmed in *Cassell & Co. Ltd.* v. *Broome & Anor.*,[6] I find that the present case is not one in which punitive or exemplary damages should be awarded. But having regard to all the circumstances of this case, particularly the nature of the libel, the position of the plaintiff and the extent of the publication, I am of the view that damages in the sum of $6,500 would be fair and adequate to vindicate him to the public and console him for the wrong done.

Accordingly, I enter judgment for the plaintiff for $6,500 and costs.

Judgment for the plaintiff.

Solicitors: *Daim & Gamany; Ariffin & Ooi.*